

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO.: 5:10-CV-86

TRACY WOODY,

Plaintiffs,

v.

BANK OF AMERICA CORPORATION,
BAC HOME LOANS SERVICING, LP,
BANK OF AMERICA, N.A., BANK OF
AMERICA HOME LOANS & INSURANCE,
COUNTRYWIDE HOME LOANS, INC.,
NATIONWIDE TRUSTEE SERVICES, INC.

Defendants.

**BRIEF IN SUPPORT OF DEFENDANTS'
JOINT MOTION TO STRIKE
PLAINTIFF'S SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS**

NOW COME Defendants Bank of America Corporation, BAC Home Loans Servicing, LP, Bank of America, N.A., Bank of America Home Loans & Insurance, Countrywide Home Loans, Inc. (collectively "the BOA Defendants") and Nationwide Trustee Services, Inc. ("Nationwide"), by and through the undersigned counsel, and pursuant to Local Civil Rules 7.1 and 7.2, EDNC, and provides the following brief in support of their Motion to Strike "Plaintiff's Second Request for Production of Documents to Defendants" and in support thereof shows the Court as follows:

PROCEDURAL POSTURE

Plaintiff commenced this action in the General Court of Justice, Superior Court Division, Wake County, North Carolina by the filing of a Complaint on or about January 29, 2010. On March 10, 2010 the BOA Defendants removed this action to this Court pursuant to 28 U.S.C. §1331 based upon the existence of a federal question due to Plaintiff's allegations of claims

arising under federal statutory law. Nationwide joined in and consented to the removal of the action.

On March 16, 2010, the BOA Defendants filed a Motion to Dismiss the Plaintiff's Complaint pursuant to Rules 9(b), 12(b)(6), and 12(b)(7) of the Federal Rules of Civil Procedure. On March 17, 2010, Nationwide also filed a Motion to Dismiss Plaintiff's Complaint pursuant to Rules 9(b), 12(b)(6), and 12(b)(7) of the Federal Rules of Civil Procedure. Plaintiff filed a response in opposition to the Defendants' Motions to Dismiss (Document 14) entitled "Answer in Objection to Motion of Defendants' Dismissal Number 8 and Number 10."

Defendants' Motions to Dismiss remain unresolved at this time.

On or about June 7, 2010, Plaintiff served a document entitled "Second Request for Production of Documents to Defendants." *See* Defendants' Joint Motion to Strike, Exhibit A.

No Rule 26(f) Conference has occurred, and no deadline for Rule 26(f) Conference has been ordered by this Court. This action is not exempt from initial disclosure under Rule 26(a)(1)(B).

ARGUMENT

Plaintiff's discovery requests are premature and should be ordered stricken. Rule 26(d)(1) provides: "a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by Court Order." This action is not exempt from initial disclosure under Rule 26(a)(1)(B). The parties have not stipulated to any early discovery in this action, and no Order has been entered permitting early discovery in this action. Fundamentally, no grounds exist to waive the requirements of Rule 26(d)(1), and Defendants should not be obligated to respond to discovery while their Motions to Dismiss remain pending.

CONCLUSION

Plaintiff's discovery requests are premature and in violation of the Rules of Civil Procedure. Accordingly, "Plaintiff's Second Request for Production of Documents to Defendants" should be stricken.

This the 15th day of June, 2010.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing *Brief in Support of Defendants' Joint Motion to Strike Plaintiff's Second Request for Production of Documents* was filed with the Clerk of the Court using the CM/ECF, which will send notification of such filing to counsel for the following Defendants via electronic mail:

donald.pocock@nelsonmullins.com

ATTORNEYS FOR DEFENDANTS BANK OF
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SERVICING, L.P., BANK OF AMERICA, N.A., BANK
OF AMERICA HOME LOANS & INSURANCE and
COUNTRYWIDE HOME LOANS, INC.

And was served by mailing copies thereof, first class mail, postage prepaid, addressed to the following persons at the following addresses which are the last addresses known to me:

Tracy Woody
4908 Vallery Place
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PRO SE PLAINTIFF

This the 15th day of June, 2010.

s/Jason B. James